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IN THE

Supreme Court of the United States

October Term, 1952.

No. 433.

THE PENNSYLVANIA RAILROAD COMPANY,
Petitioner,

v.

JOSEPH J. PURVIS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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The Pennsylvania Railroad Company, petitioner, prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above case on August 4, 1952.

OPINIONS BELOW.

The opinion of the District Court for the Eastern District of Pennsylvania (R. 69a-73a) is reported in 98 F. Supp. 212. The first opinion of the Court of Appeals (R. 6-7) is not reported. Its second opinion is reported in 198 F. 2d 631.

The opinion of the District Court for the Eastern District of Pennsylvania after the first trial of this case is only indirectly involved in this proceeding, and is not printed in the record. It is reported in 96 F. Supp. 698.

JURISDICTION.

The judgment of the Court of Appeals was entered on August 4, 1952 (R. 20-21). The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED.

1. Does federal law require "clear and convincing" evidence or merely a "preponderance" of evidence to avoid on the ground of fraud a contract or release given by an employee to his railroad employer?

2. Under either standard of proof, is there an issue of fact for the jury when the only basis for avoiding two releases given by an employee is the employee's testimony that the first release "must have been" covered by another paper when signed and that he did not read the second release when signing it?

STATEMENT OF THE CASE.

Plaintiff brought this action under the Federal Employers' Liability Act to recover for injuries resulting from an accident which had occurred in 1943, almost three years before the action was instituted. Twelve days after the accident, subsequent to his return to work, and without any railroad representative asking him to do so, he went to the defendant's claim department (R. 12a, 34a). There he signed a full release of his claim for personal injuries. This release was upon a form captioned in large type "THIS IS A RELEASE" which recited the plaintiff's name, position and the date and place of the accident. In large type just above plaintiff's signature the document recited that the plaintiff had read it and understood it (R. 66a-67a). He was then given a check which he endorsed and cashed later in the day out of the presence of any representative of defendant's claim department, signing his name immediately beneath the following language (R. 30a, 68a):

"In full settlement and satisfaction of all claims, demands and causes of action resulting from personal injuries sustained while employed as Freight Brakeman, at or near Philadelphia, Pennsylvania, on or about October 13, 1943."

At the first trial in 1947, plaintiff contended that he and the claim agent with whom he had talked were mutually mistaken concerning the extent of his injuries. After a jury disagreement defendant's motion for judgment was overruled on the ground that there was some evidence of such a mistake (see 96 F. Supp. 698, 700).

At the second trial in 1950 plaintiff's own testimony established that there was no mutual mistake as to injuries (R. 55a, 56a), and plaintiff's contention shifted to a claim of fraud. He testified that he had talked to the claim agent about his lost wages (R. 13a), and asserted for the first time that there "must have been" a paper over the standard release form when he signed it (R. 24a-29a). The only thing he said about the release agreement on the back of the check was that he didn't read it before endorsing the check by writing his signature directly under the release (R. 30a).

The jury found that plaintiff did not "know that he was signing a release of his claim for injuries" and rendered a verdict in favor of plaintiff for one thousand dollars. Thereafter, the District Court (Bard, J.) granted defendant's motion for judgment. It ruled that plaintiff's testimony concerning execution of the standard form release was given too hesitantly and had too many inconsistencies to constitute the "clear and unequivocal" evidence of fraud required by the law (R. 72a, 98 F. Supp. 214). Judge Bard held, further, that the release on the check was a bar as a matter of law, there being no evidence whatever that there was any misrepresentation or mistake which was a factor in plaintiff's signing it (R. 72a-73a, 98 F. Supp. 214).

Plaintiff appealed to the Court of Appeals for the Third Circuit, which, after argument, handed down the following *per curiam* opinion (R. 6-7):

"Our own examination of the record satisfies us that the District Judge did not commit any substantial errors of law and that, under the facts, the judgment below is clearly right. It will be affirmed."

Shortly thereafter this Court decided the case of *Dice v. Akron, C. & Y. R. R.*, 342 U. S. 359 (1952), and the Court of Appeals ordered a rehearing in the case at bar. After the rehearing the Court of Appeals [1] reversed itself and the District Court and directed reinstatement of judgment upon the jury verdict for plaintiff. The Court of Appeals disagreed with Judge Bard as to the legal sufficiency of the release upon the check, but its opinion did not discuss the lower court's conclusion that the evidence as to fraud was insufficient to submit to the jury as "clear and unequivocal." However, the Court of Appeals expressly rejected the requirement that proof of fraud in this type of action be clear, unequivocal and convincing, which it recognized as the prevailing federal rule, and held that under federal law fraud may be proved merely "by a preponderance of relevant evidence". Further, it directed the District Court judges of the Third Circuit to apply that test in the future (R. 19).

The petitioner seeks review of the judgment entered in accordance with that opinion (R. 20-21).

REASONS FOR GRANTING THE WRIT.

1. The decision of the court below not only reversed its own earlier decision in this case, but it is in direct conflict with its earlier opinion in *Callen v. P. R. R.*, 162 F. 2d 832 (3rd Cir. 1947),[2] and with the leading case in the Eighth Circuit, *Chicago & N. W. Ry. v. Wilcox*, 116 Fed. 913

1. The same judges who had heard the original argument on appeal, i.e., Circuit Judges McLaughlin, Kalodner and Staley. Judge Kalodner "concurred in the result" (R. 19).

2. Aff'd 332 U. S. 625 (1948).

(1902), which sets forth what has heretofore been uniformly applied as the federal rule concerning the quantum of proof necessary to avoid a release or other contract: *Whitmarsh v. P. R. R.*, 61 F. Supp. 850, 852 (E. D. Pa. 1945); *Lion Oil Refining Co. v. Albritton*, 21 F. 2d 280, 282 (8th Cir. 1927); *Merwin v. N. Y., N. H. & H. R. R.*, 62 F. 2d 803, 804 (2d Cir. 1933); see RESTATEMENT, CONTRACTS § 511; 5 WILLISTON ON CONTRACTS §§ 1597-1598 (Rev. ed. 1937).

The new rule announced by the court below resulted from its prediction, based upon one sentence lifted from the dissenting opinion in *Dice v. Akron, C. & Y. R. R., supra*, as to what this Court would hold should the question be presented to it. The Court of Appeals for the Third Circuit said (R. 19, 198 F. 2d 633-4):

> "We are satisfied that *if and when* the problem is squarely before the Supreme Court the rule pronounced will be in accord with Mr. Justice Frankfurter's above quoted language ['proof of fraud need be only by a preponderance of relevant evidence'—dissenting opinion] and therefore, in fairness to the district judges of this circuit and to ourselves, we adopt that test for this circuit in applicable instances." (Emphasis added.)

Thus the Court of Appeals created a conflict in federal law where no conflict theretofore existed, and the matter should be resolved by this Court in order to eliminate the inevitable confusion, expense and litigation which such a conflict breeds. As this Court has emphasized, uniformity of law as to the validity of releases under the Federal Employers' Liability Act is essential to effectuate the purposes of that Act: *Dice v. Akron, C. & Y. R. R.*, 342 U. S. 359, 361 (1952).

2. The decision of the court below will have a seriously adverse effect upon future settlement negotiations. Settlements are favored by the law. A rule which will facilitate upsetting them in the absence of clear and con-

vincing reasons is contrary to the strong policy which requires respect for written contracts as final and binding. That policy has been expressed in virtually every jurisdiction by the requirement that a contract may be avoided only if fraud is proved by evidence variously described as "clear", "clear and convincing" or "clear, convincing and unequivocal." That measure of proof has been adopted by the American Law Institute: RESTATEMENT, CONTRACTS § 511.

Certainty is an important element in contract negotiations and a uniform rule for state and federal courts is needed. A proposed new federal rule in conflict with earlier decisions, both state and federal, merits full consideration by this Court and should not be rested on a single sentence from a dissenting opinion.

3. The question of the quantum of proof involves more than mere phraseology, as is well demonstrated by the case at bar. When the trial judge and the judges of the Court of Appeals were applying the rule requiring "clear and convincing" proof, plaintiff was unable to prevail. His only explanation of his signature on the release was that a piece of paper must have covered it, a thought expressed for the first time at the second trial seven years after the release was executed. The plaintiff, by his own admission an experienced business man (R. 26a),[3] would not say categorically that the paper *was* over the release, but under constant questioning used such phrases as "that must have been covered up with paper" (R. 24a), "I imagine it was" (25a), "I am most sure it was" (26a). In short, plaintiff's own testimony concerning the basic fact upon which he relied was equivocal, and Judge Bard quite correctly held that plaintiff had not proved his case by "the clear and unequivocal evidence required by the law" (R. 72a). Judge

3. He had worked for many years in his own business and as a club manager, as appears from his testimony at the first trial—N. T. 20-22, 29, 53.

Bard's decision in this respect was so clearly correct that the Court of Appeals affirmed it in a two sentence *per curiam* opinion (R. 6-7).

When the Court of Appeals reconsidered its opinion after the dissent in the *Dice* case, however, plaintiff's equivocal explanation was held to create a jury issue. The reversal of position can be explained only on the basis of the test applied by the court in deciding what kind of evidence was sufficient to make out a *prima facie* case. This case, therefore, demonstrates the substantial effect that a rule concerning the quantum of proof in fact plays in the ultimate outcome of litigation.

4. The ruling of the Court of Appeals that the kind of evidence presented in this case constitutes sufficient *prima facie* proof of fraud to vitiate an employee's release is in conflict with this Court's decision in *Callen v. P. R. R.*, 332 U. S. 625 (1948). In that case the Court expressly rejected an argument that the burden of proof should be upon a railroad employer to establish the absence of fraud in an employee's release, holding that in the absence of legislation to the contrary, settlements of litigation have *prima facie* validity, and the employee attacking a settlement must bear the burden of showing it is "tainted with invalidity, either by fraud practised upon him or by a mutual mistake . . ." 332 U. S. at 630. As a practical matter, no difference exists between a ruling that places the burden of proof upon the employer and a ruling that a *prima facie* case of fraud is made out by the kind of argumentative and inconsistent testimony plaintiff offered here that when he signed one release it "must have been" obscured and that he did not read the second release when signing it.

5. The Court of Appeals for the Third Circuit prefaced its announcement of the new rule with the statement (R. 18):

> "Though of but collateral interest in this particular case, it is important to comment at this time on the quality of proof necessary to set aside a release in this type of action."

This "comment" does not diminish in any way the importance of the Court's ruling as a breeder of conflict in an area of federal law where uniformity is particularly desirable. The new rule is controlling on District Courts of the Third Circuit, whose decisions will thus conflict with those in the other circuits. Moreover, the record makes it plain that the Court of Appeals misconceived the pertinence of its ruling to this lawsuit, else it would not have referred to it as of "but collateral interest in this particular case." In the first place, when clear and convincing proof of fraud was the test, the judgment of the District Court was affirmed *per curiam* as "clearly right", whereas under the preponderance of evidence test the judgment was reversed. In the second place, the District Court's unchallenged conclusions precluded reversal on any theory if the clear and convincing test were applied. Having heard the plaintiff testify as to the signing of the printed release, the Court found the testimony was given too hesitantly and had too many inconsistencies to be clear and unequivocal evidence. Any verdict in favor of plaintiff "would at best, it seems to me, be based only upon a preponderance of evidence . . ." (R. 72a). The Court of Appeals, in reversing, did not in any way question the correctness of these conclusions.[4] Consequently, its holding that a preponder-

4. The District Court later in its opinion stated: "While *it may be that there was sufficient evidence of fraud surrounding the signing of the printed release in order to take that issue to the jury,* no fraud was perpetrated when plaintiff indorsed the check, and there was nothing for the jury to consider in this regard" (R. 72a). The Court of Appeals quoted only the words underlined, and then stated: "*We agree with the district judge* that the validity of the release, under the testimony, was properly a jury question

ance of the evidence establishes fraud was essential to the reversal rather than "of but collateral interest."

6. The ruling of the Court of Appeals that the release on the check should be disregarded ignores this Court's decision in *Callen v. P. R. R.*, 332 U. S. 625, 630 (1948), and well-settled federal law, quite apart from the question as to the quantum of proof. The release on the check in the case at bar was legibly printed and typewritten in perfectly understandable language (R. 68a). The plaintiff made no pretense that he was induced to sign it by misrepresentation or because of mistake. He admitted that he signed it of his own volition when unaccompanied by any representative of defendant (R. 30a). He simply said that he didn't read it (R. 30a). Careful research fails to reveal any authority, state or federal, which has permitted avoidance of a release or other contract upon that ground. Rather, the universal rule is that one who is given the opportunity but fails to read a contract before he signs it is bound thereby. See the many cases collected in 1 WILLISTON ON CONTRACTS §§ 90-90C, 95A (Rev. ed. 1936). See also Judge Learned Hand's succinct analysis of the rule in *Ricketts v. P. R. R.*, 153 F. 2d 757, 760 (2d Cir. 1946); and the application of the rule to an F. E. L. A. action in *Merwin v. N. Y., N. H. & H. R. R.*, 62 F. 2d 803, 804 (2d Cir. 1933).

The Court of Appeals in the instant case decided that the release on the check could be disregarded, not because plaintiff had neglected to read it, but for the sole reason that plaintiff claimed a paper must have obscured a separate and entirely different document, the standard release form which he had executed earlier in the day. The Court reasoned that to hold otherwise would destroy plain-

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. . ." (R. 17) (emphasis supplied). The full text of the District Court's opinion, however, makes it perfectly plain that the judge held that the validity of the release was *not* a jury question under the testimony if the clear and convincing test were applied (R. 69a-73a).

tiff's right to have the jury pass upon the validity of the first release (R. 18, 198 F. 2d 633). That, we submit, begs the question. The very purpose of the release on the check is to create an assurance that unjustified claims concerning the nature of the settlement negotiations will not be made after the negotiations have terminated. That assurance is created by giving the employee involved a second release which he may examine and sign at his leisure. Through the release on the check which must of necessity come to his personal attention he is given a full and fair disclosure and the opportunity to indicate his complete satisfaction with the bargain he has made. The plaintiff in the instant case did exactly that. He signed two contracts, and he suggested no ground which would serve to set aside the second. He in effect said, "I understand fully why I am getting this money from the railroad, and I agree to accept it subject to that understanding." Whether his agreement is thought of as a contract independent of the earlier release or is thought of as a ratification of an earlier settlement negotiation makes no difference. The bargain was clear. Such a release would bind anyone else. In accordance with this Court's ruling in the *Callen* case, it should bind this railroad employee.

To disregard the strong policy which has led the courts to protect settlements and to permit the opening of claims upon such frivolous grounds as were presented in this case jeopardizes the practice of settling claims. Day in and day out all types of controversies and disputed claims are settled and the settlements are evidenced by releases. Federal and State courts have, heretofore, universally recognized that such releases and contracts of settlement must not be lightly disregarded. At the same time the law has developed adequate safeguards against true cases of fraud, overreaching, or mistake. The decision of the court below goes far beyond these established safeguards. It will only serve to invite attack on completed settlements and to cast grave doubt on the effectiveness of the amicable adjust-

ment of disputed claims and controversies—a practice which until now has been almost universally accepted as sound and desirable. The case is a small one. The principles involved are important and require review by this Court.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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